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Postal Regulatory Commission
Office of Public Affairs and Government Relations
901 New York Ave., NW
Suite 200
Washington, DC 20268-0001

Re: Comments in Opposition to USPS Renewed Request to Increase Postal Rates Due to Asserted Exigent Circumstances, Docket R2013-11

Dear Postal Regulatory Commission:

The Financial Services Roundtable ("FSR") and National Association of Mutual Insurance Companies ("NAMIC") welcome the opportunity to provide comments in response to the invitation by the Postal Regulatory Commission ("Commission") for public comments on the renewed proposal by the U.S. Postal Service ("USPS") to increase postal mailing rates as a consequence of alleged "exceptional or extraordinary" circumstances. As FSR and NAMIC previously stated in a submission to this Commission dated September 7, 2010, and reiterate here, this is one of the most significant requests the USPS has ever presented to the Commission.

FSR and NAMIC respectfully submit that the Commission should deny this request on the merits. The Commission should deny the request on the merits for the basic reason that the USPS has failed to sufficiently establish a causal connection between the requested rate increase and any genuinely unanticipated effects of the most recent recession.

If the Commission has any doubts that outright denial is the right course of action, then the Commission should at least deny the request without prejudice to its renewal following the adjournment *sine die* of 113th Congress, which is considering legislation to address many of the issues covered by the request. Congress enacted the 2006 Postal Accountability and Enhancement Act ("PAEA"), which created the Commission as "a powerful new regulator."[1] One of the powers entrusted to the Commission by Congress includes the Commission's ability to provide "appropriate relief" in response to an exigent request,[2] and, thus, denial without prejudice may be appropriate administrative action in this context. FSR and NAMIC respectfully submit that the Commission should strongly urge the USPS to take necessary steps required to modernize, streamline, and reorganize its operations to ensure the prompt and efficient service Congress and the American public as well as the business sector both expects and needs for the United States to compete effectively in the global economy.

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[1] H.R. Rep. No. 109-66, at 43-44 (2005), *available at* www.gpo.gov/fdsys/pkg/CRPT-109hrpt66/pdf/CRPT-109hrpt66-pt1.pdf.

[2] *See* 39 C.F.R. § 3010.66 ("[A] Commission decision will be issued within 90 days of the filing of an exigent request."); *see also* 39 C.F.R. § 3010.64 ("It is Commission policy to provide appropriate relief as quickly as possible consistent with statutory requirements and procedural fairness.") (emphasis added).

USPS Has Not Satisfied the Causation Requirement

The FSR and NAMIC request that the Commission deny the USPS's request on the ground that the USPS has not factually demonstrated the circumstances justifying the USPS's request to raise postal mailing rates by an average of 4.3% for an indefinite period of time. As Senator Collins, the Senate's manager for PAEA when it was enacted, succinctly noted in her recent comments against the rate increase: "[t]he Postal Service is apparently asserting that . . . electronic diversion was caused by the recession, but seems to offer no evidence of such a causal link."[3] As early as 2001, well before the most recent recession, Senator Collins warned of the effect of technological innovation on the USPS, stating at that time that "[t]he advent of new technologies has proven to be a special challenge to the fulfillment of the Postal Service's traditional role" and that "the advent of E-mail and electronic bill payments have caused some to question whether the Postal Service can continue to do 'business as usual.'"[4] Technological diversion and its effect on the USPS is an issue that was foreseeable many years prior to the most recent recession. Principally for this reason, under applicable authority the USPS has failed to make the causal showing required by the statute and the controlling interpretation of it.

In Commission Order No. 1059, the Commission, relying on guidance in Commission Order No. 864, instructed the USPS, if it wished to prevail in any exigent rate increase application, that it must submit "information, materials, and

[3] *See* Comment by The Hon. Sen. Susan M. Collins (Oct. 18, 2013), at 3.

[4] *See The Financial Outlook of the U.S. Postal Service: Hearings Before the S. Comm. on Homeland Sec. and Gov'l Affairs*, 107th Cong. 6 (May 15, 2001) (prepared statement of Sen. Susan M. Collins, Member, S. Comm. on Homeland Sec. and Gov'l Affairs), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-107shrg73392/pdf/CHRG-107shrg73392.pdf.

testimony on which the Postal Service would rely to demonstrate that its Exigent Request satisfies the causal nexus of 'due to', as interpreted by the Commission in Order No. 864 . . . ."[5] Order No. 864 states that "the Commission interprets the causal nexus of 'due to' in section 3622(d)(1)(E) [of PAEA] to mean that exigent rate adjustments are permitted only if, and to the extent that, they compensate for the net adverse financial impact of the exigent circumstance."[6] Thus, "[a]n exigent rate adjustment may only be used to compensate for the adverse financial impacts of exigent circumstances that are over and above adverse impacts the Postal Service would encounter in the normal course of business."[7] In this context, where there are potentially competing causes of revenue decline, at least one of which is not in any respect "exigent," the requirement that evidence sufficiently substantiate the requisite causal connection set forth in PAEA cannot be overemphasized. An anemic economic climate that affects the economy at large, even in the unanticipated circumstances of the most recent recession, does not give rise to a justifiable claim for a rate increase where, as here, a causal nexus between the recession and its impact on postal volume is not sufficiently untangled from the effects of technological advances that have driven so much communication into the digital sphere.

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[5] *See* Order No. 1059 (Dec. 20, 2011), at 6 (setting forth procedures by which USPS may submit and supplement an exigent rate request in accordance with applicable authority including Order No. 864, 39 U.S.C. § 3622(d)(1)(E), and 39 C.F.R. part 3010, subpart E), *available at* http://www.prc.gov/Docs/78/78852/Order_No_1059.pdf; *see also* 39 U.S.C. § 3622(d)(1)(E) (stating the requirement that "rates may be adjusted on an expedited basis <u>due to</u> either extraordinary or exceptional circumstances.") (emphasis added).

[6] *See* Order No. 864 (Sept. 20, 2011), at 25, *available at* http://www.prc.gov/Docs/75/75930/Order_No_864.pdf.

[7] *See id.* at 45.

Second, the USPS seeks an exigent rate increase based on alleged continuing harm due to the most recent recession without an identified end date for the rate modification – a remedy not economically calibrated to address the most recent recession's discrete, causally-linked, effects on USPS revenue. A basic principle is that relief, including relief to address even the most serious wrongs in society, must fit the issue justifying relief. *See Milliken v. Bradley*, 433 U.S. 267, 281-82 (1977). The open-ended increase here violates this basic principle. Further, routinely permitting rate increases based on alleged continuing harm due to the most recent recession would contravene the centerpiece of the modern postal rate system which is the Consumer Price Index ("CPI") price cap established by PAEA.[8]

The CPI cap serves two critical functions: (1) providing an incentive for the USPS to reduce costs and improve the efficiency of its operations, and (2) providing pricing stability and predictability for USPS consumers. USPS witness Thomas Thress recently projected an additional volume loss of about 5 billion pieces of mail in 2013 and about 5 billion pieces in 2014.[9] The period for which the USPS may raise stamp prices due to a recession that ended in June 2009 should be limited. Based on Mr. Thress' projections, it seems that the USPS could seek additional money in successive, new exigent requests based on volume losses purportedly related to the most recent recession in 2014, 2015 and beyond. If the Commission were to adopt the USPS's position that the future volume losses represent a continuing harm due to the most recent recession, the

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[8] *See* 39 U.S.C. § 3622(d).

[9] "Responses of the United States Postal Service to Questions 1-27 of Presiding Officer's Information Request No. 6", Question 14 (Nov. 13, 2013) ("I estimate that the Great Recession is expected to have reduced Postal Service market-dominant mail volumes by 63.9 billion pieces by the end of FY 2014.").

USPS could routinely seek rate increases above the price cap, thereby undermining the integrity of the basic regulatory approach set out in PAEA.

Third, and relatedly, as has been made clear in the common experience of every business and individual in the last decade, and of which the Commission may take notice, electronic diversion has led to a significant decline in mail volume.[10] There is no reason to think this erosion of the USPS's customer base will not continue as the economy recovers and digital communication increases even further. If an exigent rate increase is granted by the Commission here, then there will be no foreseeable end to the USPS's need for additional rate increases in the future as a result of the ongoing issue of electronic diversion of mail.

As is plain to all in this arena, technological diversion of mail is a phenomenon that has existed and accelerated for years, and is an issue that had been identified by both members of Congress and the Government Accountability Office ("GAO") over a decade ago, well before the most recent

[10] *See, e.g.*, *Solutions to the Crisis Facing the U.S. Postal Service: Hearings Before the S. Comm. on Homeland Sec. and Gov'l Affairs*, 113th Cong. 177 (Feb. 13, 2013) (prepared statement of R. Richard Geddes, Ph.D., Associate Professor, Dep't of Policy Analysis and Mgmt., Cornell University), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-113shrg80219/pdf/CHRG-113shrg80219.pdf; *Are Postal Workforce Costs Sustainable? Hearings Before the H. Comm. on Oversight and Gov't Reform*, 112th Cong. 63 (April 5, 2011) (statement of Rep. Dennis A. Ross, Member, H. Comm. on Oversight and Gov't Reform), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68048/pdf/CHRG-112hhrg68048.pdf; *Pushing the Envelope: The Looming Crisis at USPS: Hearings Before the H. Comm. on Oversight and Gov't Reform*, 112th Cong. 6 (March 2, 2011) (statement of Rep. Stephen F. Lynch, Ranking Minority Member, H. Subcomm. on Fed. Workforce, U.S. Postal Service and Labor Policy), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg67366/pdf/CHRG-112hhrg67366.pdf.

recession.[11] The USPS has had an opportunity since the early 2000's to mitigate its costs and modify its operations in light of the identified persistent obstacle of technological diversion of mail. The USPS's aim should be to continue to reduce its costs and right-size its business to combat the continuing issue of mail diversion which has been present for years and will likely continue well into the future.

FSR and NAMIC believe that the USPS should focus on its long-term viability by addressing structural issues within its organization and by right-sizing its operations before turning to the extraordinary measure of an exigent rate request. At best, the instant increase would provide a temporary infusion of funds, and would not address the USPS's more basic business issues.[12] Among other calls for reform, the GAO has encouraged the USPS to streamline its network.[13] The GAO and members of Congress alike have recognized USPS's

[11] *See, e.g.*, *The Financial Outlook of the U.S. Postal Service: Hearings Before the S. Comm. on Homeland Sec. and Gov'l Affairs*, 107th Cong. 50 (May 15, 2001) (prepared statement of U.S. Gov't Accountability Office) ("The basic statutory framework that governs the Postal Service has not changed since 1970, despite the fact that developments in technology and a more competitive marketplace provide more communications and delivery choices to businesses and consumers."), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-107shrg73392/pdf/CHRG-107shrg73392.pdf.

[12] *See* Comment by The Hon. Sen. Susan M. Collins (Oct. 18, 2013), at 2 ("An increase in rates is an attempt at an easy out by the Postal Service, rather than maximum efficiencies and cost savings, and will do nothing more than drive customers out of the Postal Service faster than they are already departing.").

[13] *See, e.g.*, *Options to Bring the Postal Service Back from Insolvency: Hearings Before the H. Comm. on Oversight and Gov't Reform*, 113th Cong. 15 (April 17, 2013) (prepared statement of U.S. Gov't and Accountability Office), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg82436/pdf/CHRG-113hhrg82436.pdf.

need to decrease costs and right-size its labor force, which accounts for about 80% of the USPS's expenses.[14]

The Postal Service Has Not Met Its Burden of Proof

The USPS relies on the statements of its witness, an independent economist, Thomas E. Thress in estimating the effect of the recession on mail volumes. The statement of Mr. Thress insufficiently attributes an unexpected loss in mail volume to the most recent recession.

The Estimated Losses in Mail Volume are Implausible

USPS witness Thress estimates that virtually all of the mail volume losses that have occurred since 2007 are attributable to the most recent recession, and attempts to support this estimation with several insufficient theories. Mr. Thress estimates that the most recent recession had a unique and disproportionate negative effect on mail volumes relative to all other industry segments and

[14] *See, e.g.*, *Solutions to the Crisis Facing the U.S. Postal Service: Hearings Before the S. Comm. on Homeland Sec. and Gov'l Affairs*, 113th Cong. 3 (Feb. 13, 2013) (statement of Rep. Darrell E. Issa), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-113shrg80219/pdf/CHRG-113shrg80219.pdf; *Options to Bring the Postal Service Back from Insolvency: Hearings Before the H. Comm. on Oversight and Gov't Reform*, 113th Cong. 15 (April 17, 2013) (prepared statement of U.S. Gov't Accountability Office), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg82436/pdf/CHRG-113hhrg82436.pdf; *U.S. Postal Service In Crisis: Proposals to Prevent a Postal Shutdown: Hearings Before the S. Comm. on Homeland Sec. and Gov'l Affairs*, 112th Cong. 53 (Sept. 6, 2011) (statement of Sen. Thomas R. Carper, Member, S. Comm. on Homeland Sec. and Gov'l Affairs), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-112shrg72477/pdf/CHRG-112shrg72477.pdf.

macroeconomic variables.[15] Mr. Thress also estimates that not only have mail volumes failed to stabilize or rebound after the recession - like other macroeconomic variables - but that the negative effect of the most recent recession on mail volumes is becoming more pronounced the further in time we are removed from it.[16]

Mr. Thress thus estimates that *but for* the most recent recession mail volume today would have been greater than mail volume in 2007.[17] This is not plausible. First-Class Single Piece mail, the largest grouping by far in 2007, peaked at 54.2 billion pieces in 1998 and then began to recede.[18] By 2007, this grouping of mail had decreased to 40.122 billion pieces, which continued to drop during the recession.[19] Volume declines are attributable to both mail switching to workshare as well as electronic diversion – which started long before the recession as consumers increasingly turned to electronic methods to pay bills. First-Class Workshared mail grew quickly at its start, but then growth slowed at the volume peak, and volume was essentially flat in 2005, 2006, and 2007 at

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[15] *See* "Further Statement of Thomas E. Thress on Behalf of the United States Postal Service," at 6 (Sept. 26, 2013), *available at* http://www.prc.gov/Docs/87/87932/ThressStatement.pdf.

[16] *See id.* at 6-7.

[17] *See id.* at 7.

[18] *See* "Revenue, Pieces, and Weight by Classes of Mail and Special Services for Government Fiscal Year 1999," at 1 (Nov, 19, 1999) (illustrating decline in First-Class Single Piece mail between fiscal year 1998 to 1999), *available at* http://www.prc.gov/Docs/20/20110/rpw-gfy-1999.pdf.

[19] *See* "Revenue, Pieces, and Weight by Classes of Mail and Special Services for Fiscal Year 2007," at 1 (Oct. 31, 2007), *available at* http://www.prc.gov/Docs/58/58254/Fy2007_RPWsummaryreport.xls.

which point First-Class Workshared mail began to decline and continues on this declining trend today.

The Estimated Volume Losses are Inconsistent with the Behavior of Other Macroeconomic Variables

The negative effects of the most recent recession were evident in many macroeconomic variables such as GDP, employment, investment, and retail. Many other measures declined and bottomed-out as the recession progressed, but then rebounded after the recession ended in 2009 and the economy began to recover. In contrast, Mr. Thress estimates the negative effect of the most recent recession on mail volumes is becoming more pronounced the further in time we are removed from the recession.

The Estimated Volume Losses Do Not Reflect the Experience of Mailers

The USPS's theory of the case does not reflect the experience of many high-volume financial institution mailers. Secular mail volume declines pre-dated the most recent recession and will continue into the future. Most sophisticated financial institutions had implemented plans to shift significant volumes of mail to digital alternatives well in advance of the most recent recession. Those efforts continue today. The most recent recession was not the sole or primary cause of the increase in the shift toward electronic substitution of information delivery by financial institutions. There are several phenomena that have driven the shift toward electronic substitution by these institutions including: (1) the introduction and adoption of new technologies by customers, such as smartphones, tablets, and other devices, (2) the development of new online platforms such as applications on devices, as well as the building-out of websites, (3) internal campaigns to encourage a shift toward embracing new technologies, (4) general cost-reduction efforts, (5) improving customer convenience, and (6) changes in customer demographics, such as the increase in "digital natives." These factors will continue to drive a shift toward electronic alternatives and away from physical mail.

Alternative Theory Behind Volume Decline

USPS witness Thress' assumptions are counterintuitive, anomalous in comparison with other macroeconomic indicators, and inconsistent with the experience of high-volume commercial mailers. A theory consistent with other macroeconomic indicators as well as with mailer experiences is that other factors, notably the trend toward increasing electronic diversion, contributed significantly to mail volume losses.

Mr. Thress improperly attempts to subsume all preexisting drivers of mail volume losses within the impact of the most recent recession by attributing declines in mail volumes to macroeconomic variables including "other factors which began to affect mail volumes over the time period associated with the Great Recession."[20] Basic economic factors affected mail (as they affected the entire economy), but their impact diminishes every year. Because the recession did not trigger other pre-existing factors, these other factors must be excluded from the effects attributed to the alleged exigent circumstances.

USPS witness Thress' attempt to subsume all of these independent factors into his calculation is precisely what the Commission has cautioned against. As discussed above, the Commission requires the Postal Service to work hard at decompressing these other factors to isolate the effects of the

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[20] *See* "Further Statement of Thomas E. Thress on Behalf of the United States Postal Service," at 5 (Sept. 26, 2013), *available at* http://www.prc.gov/Docs/87/87932/ThressStatement.pdf.

claimed exigency. As stated by the Commission in Order No. 864, "[w]hen quantifying the net adverse financial impact of the exigent circumstances, the Postal Service must factor out the financial impact of non-exigent circumstances, such as the continuing effects of electronic diversion. This process ensures that an exigent rate adjustment is limited to the specific and precise adverse effects of the exigent circumstances as opposed to other, non-exigent factors."[21]

Pending Legislation Addresses Postal Reform

As the Commission is aware, there are numerous and major policy questions relating to the USPS's fiscal situation that Congress is currently working to address through pending legislation. FSR and NAMIC are of the fundamental belief that the most appropriate forum for those policy issues to be debated is in Congress, and that this Commission's granting of the USPS's request would serve to slow the impetus for needed legislative action to address fundamental issues at the USPS. This is especially true in that the authority to establish and maintain the national postal system is vested expressly by the Constitution in the Congress in the first instance. *See generally Schwartz v. Brodsky*, 265 F. Supp. 2d 130, 134 (D. Mass 2003) (stating in light of pending legislation, "[i]t would be the very opposite of healthy deference for this Court to hear this case while such legislation is pending before Congress.") (internal quotation marks and citation omitted). Further, granting an exigent rate increase would threaten pending legislation and make it more difficult for Congress to come together on postal reform. This is due to the fact that Congress may perceive the exigent increase as a permanent fix to the USPS's fiscal issues. However the exigent price increase would, at best, only help the USPS's fiscal

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[21] *See* Order No. 864 (Sept. 20, 2011), at 48, *available at* http://www.prc.gov/Docs/75/75930/Order_No_864.pdf.

situation in the short term but would not assist the USPS in placing it on firm financial ground in the long term.

Pending before Congress is legislation that addresses such major issues relating to the USPS's fiscal situation as the prefunding of retiree benefits, frequency of USPS delivery services, modification of the USPS's health benefits and workers' compensation programs, and other reforms. In the past, the USPS has demonstrated its recognition of the importance of deference to pending legislative developments. On October 4, 2011, the USPS moved to stay its request for an exigent rate increase because of legislation pending before Congress that may have obviated the need to request the exigent increase.[22] Additionally, Postmaster General and USPS CEO, Patrick R. Donahoe, noted in a prepared statement for Congress that "the Postal Service would much rather pursue legislative reforms to stabilize our business, than to enact price increases that could hurt demand."[23] Members of Congress, too, have indicated that pending legislative reforms may be more effective in alleviating the USPS's fiscal concerns than increasing postal rates.[24]

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[22] *See* Motion of the USPS to Stay Its Req. for Exigent Relief, Docket No. R2010-4R, (Oct. 4, 2011), *available at* www.prc.gov/Docs/76/76350/MotionToStay.pdf.

[23] *See A Path Forward on Postal Reform: Hearings Before the H. Comm. on Oversight and Gov't Reform*, 113th Cong. 18 (July 13, 2013) (statement of Patrick R. Donahoe, Postmaster General & CEO, United States Postal Service), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg82401/pdf/CHRG-113hhrg82401.pdf.

[24] *See Can a USPS-Run Health Plan Help Solve its Financial Crisis? Hearings Before the H. Comm. on Oversight and Gov't Reform*, 112th Cong. 34-35 (March 27, 2012) (statement of Rep. Dennis A. Ross, Chairman, H. Subcomm. on Fed. Workforce, U.S. Postal Serv. and Labor Policy), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg74456/pdf/CHRG-112hhrg74456.pdf; *see also Addressing the U.S. Postal Services' Financial*

Congress is currently considering several major reforms in pending legislation, such as S. 1486 in the Senate and H.R. 2748 in the House of Representatives, including the following:

- **Prefunding Requirements**: Under PAEA, the USPS is required to prefund health care benefit payments for future retirees. Pending legislation would address the fact that USPS may be substantially overpaying such benefits, and seeks to modify the formula under which the USPS is required to make such payments so that payments are more accurately calculated according to actuarial principles. Legislation also seeks to lower the funding target from 100 percent to 80 percent of unfunded liability. These yearly prefunding payments amount to billions of dollars per year, and reform would make a great deal of difference to the USPS's bottom line.

- **Frequency of Mail Delivery**: Under current budget-related legislation, the USPS is required to deliver mail six days per week. Pending legislation would give the USPS flexibility in terms of delivery schedule.

- **Workers' Compensation**: Pending legislation would provide additional authority to the USPS to design and administer a program for the payment of benefits to employees injured while performing duties as a postal employee, and also require the

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Crisis: Hearings Before S. Comm. on Homeland Sec. and Gov't Affairs, 112th Cong. 12 (May 17, 2011) (statement of Sen. Scott P. Brown, Member, S. Subcomm. on Fed. Fin. Mgmt., Gov't Info., Fed. Servs., and Int'l Sec.), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-112shrg67637/pdf/CHRG-112shrg67637.pdf.

automatic transition of retirement-age recipients of workers' compensation benefits to instead begin receiving retirement benefits.

- **Health Care Benefits**: Pending legislation permits the USPS to establish a Postal Service Health Benefits Plan, outside of the Federal Employees Health Benefits Program ("FEHBP"). The USPS has previously requested this authorization from Congress, which USPS noted would result in a reduction of USPS costs.[25]

Long-lasting and needed remedies for the USPS thus lie in legislative reform, not in exigent price increases. The USPS waited nearly two years after Order No. 1059 before renewing its request for an exigent increase which USPS alleges was due to "the hope that comprehensive legislation providing sufficient relief could be enacted . . . ."[26] However, legislation in Congress is currently moving forward and an exigent rate increase would slow these congressional efforts. As stated by USPS Vice President of Network Operations Management, David Williams, the USPS "need[s] help from Congress,"[27] and enabling

[25] *See* U.S. Postal Service, "Health Benefits and Retirement Programs," white paper, at 3 (Aug. 2, 2011) ("A legislative change that allows the Postal Service to establish its own health benefits program would allow the Postal Service to fully incorporate private sector best practices, saving money while also providing comparable benefits to employees."), *available at* http://about.usps.com/news/national-releases/2011/pr11_wp_hbretirees_0812.pdf.

[26] Renewed Exigent Request of the United States Postal Service in Response to Commission Order No. 1059, at 45, Docket No. R2010-4R (revised to R2013-11) (Sept. 26, 2013).

[27] *See Postal Infrastructure: How Much Can We Afford? Hearings Before the H. Comm. on Oversight and Gov't Reform*, 112th Cong. 46 (June 15, 2011) (statement of David Williams, Vice President, Network Operations Management, United States Postal Service), *available at*

Congress to act against the current factual background instead of one that would be, at a minimum, confused by a legally-tenuous grant of "exigent circumstances" relief, is not only sensible but in keeping with the fundamental constitutional separation of powers. Just as the courts should not act when "a challenged 'continuing practice' is, at the moment adjudication is sought, undergoing significant modification so that its ultimate form cannot be confidently predicted," *A.L. Mechling Barge Lines, Inc. v. United States*, 368 U.S. 324, 331 (1962), an administrative rate-making body should also limit its interference if, at the moment action is requested, Congress is actively legislating on the same subject. Both of the bills mentioned above have been referred to committees, which in turn have taken steps to move the bills forward; H.R. 2748 has already been reported by the House Oversight and Government Reform Committee to the House as a whole for consideration. The Senate Homeland Security and Governmental Affairs Committee plans to review, mark-up, and vote on S. 1486 soon.

Conclusion

In conclusion, FSR and NAMIC urge the Commission to deny the USPS's request on the merits. Should the Commission determine that that approach should not be taken, the request should be denied without prejudice pending the final adjournment of the 113th Congress. FSR and NAMIC, both being made up

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http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg71078/pdf/CHRG-112hhrg71078.pdf; *see also Nominations of Hon. Tony Hammond and Hon. Nanci E. Langley to be Commissioner, Postal Regulatory Commission Before S. Comm. on Homeland Sec. and Gov'l Affairs*, 113th Cong. (Oct. 2, 2013) (statement of Tony Hammond, PRC Commissioner, term ending Oct. 14, 2013) ("There's no doubt legislative changes are needed to put the Postal Service on sound financial footing."), *video available at* http://www.hsgac.senate.gov/hearings/nominations-of-hon-tony-hammond-and-hon-nanci-e-langley-to-be-commissioner-postal-regulatory-commission.

of private sector companies that collectively employ millions of Americans seeking to compete in a global economy, acutely appreciate the fact that the USPS is facing tremendous business challenges. However, as stated by Senator Collins: "[t]he proposed rate increases would impose substantial costs on the mailing industry . . . and undoubtedly would accelerate further decline in mail volume and revenues."[28]

We are hopeful that the Commission will continue to work hard, as it has in the past, with the USPS, its management and employees to address the USPS's financial difficulties by fostering needed changes and innovation that confront the USPS's core, structural issues. Aside from not meeting the statutory requirements, the current request will not get the USPS to where it needs to be to fulfill its mission in the environment of the 21st Century. It should be denied or at least denied without prejudice pending congressional action.

Best regards,

Richard M. Whiting
Executive Director & General Counsel
The Financial Services Roundtable

Tim Karol
Federal Affairs Counsel
National Association of Mutual
Insurance Companies

[28] *See* Comment by The Hon. Sen. Susan M. Collins (Oct. 18, 2013), at 3.